Submission
No 129

MEASURES TO PROHIBIT SLOGANS THAT INCITE HATRED

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Submission to Inquiry on Measures to prohibit slogans that incite hatred

1. Procedural Issues

The timeframe for the inquiry is impossibly short. Laws drafted hastily and solely in reaction to horrific terrorist events like the antisemitic Bondi mass shooting are at greater risk of unintended consequences and oversights, as well as at greater risk of failing to consider Constitutional limits.

The Inquiry's deadline for submissions is 12 January, leaving very little time for organisations to properly consider their evidence and submissions given the holiday shutdown period. The Inquiry will hold no public hearings and therefore no evidence will be subject to cross-examination from Committee members, including non-Government members,

The nature of the Committee's membership means Government members have a majority and will have sole direction over the Inquiry's report and recommendations. Given the NSW Government has already announced the express intention of pursuing laws criminalising the phrase "globalise the intifada" regardless of such laws' Constitutionality,[1] the Inquiry is performing a perfunctory exercise of endorsing the Government's existing position. This is an improper use of the Parliament's Committee system.

The Inquiry's terms of reference explicitly state that the phrase "globalise the intifada" poses a threat "to community cohesion and safety and the importance of

[1] https://www.sbs.com.au/news/article/chris-minns-bondi-attack-hate-speech-laws/c2q2u3v8v

maintaining social harmony and cohesion", and implies that the phrase is one of many phrases "so inherently hateful by their nature that they lead to incitement of hatred and threaten community safety,"

These terms of reference predetermine that the phrase "globalise the intifada" is inherently hateful. That categorization is subject to intense political controversy, as this Submission details, and would likely fail to hold up in a Court challenge - certainly, the premise that "globalise the intifada" is inherently hateful has been rejected by Courts in comparable democracies such as Canada.[2]

Similarly, the terms of reference state that "best practice to combat the use of such slogans," includes "measures and approaches taken in the United Kingdom," when the United Kingdom's infringements on freedom of political communication are subject to current Court challenge with grounds already upheld by a Court, widely criticised by Human Rights groups and the United Nations Special Rapporteur.

By predetermining which phrases are "inherently hateful" and which approaches are "best practice", before any submissions have been sought or evidence has been considered by the Committee, this Inquiry reveals itself to be a political exercise with the express intention of approving any legislative response already determined by the Government, rather than an Inquiry with the intention of making independent evidence-based recommendations for the Government's consideration.

The statement on the Inquiry's submission portal that "the Committee will receive all submissions made through the portal, but will only publish submissions from subject matter experts and organisations (including community organisations)" is of significant concern and out of step with the established process of parliamentary inquiry. Committee members of particular political predispositions should not have the power to determine which individuals are "subject matter experts" and which are not, and placing the power of determination in the hands of the Secretariat would place an unacceptable expectation of political determination upon independent public servants.

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[2] University of Toronto (Governing Council) v Doe et al. 2024 ONSC 3755

Recommendation 1: Extend the Inquiry's deadline for submissions

Recommendation 2: Conduct public hearings

Recommendation 3: Publish all submissions received

2. "Globalise the Intifada" and other political slogans

Proposals to criminalize political slogans "globalise the intifada" and "from the river to the sea" stem from fundamental linguistic, geographical and historical misunderstandings and are likely to burden the implied freedom of political communication contained within the Australian Constitution.

The Arabic word "intifāḍa" (انتفاضة) derives from the root n-f-ḍ (ن-ف-ض). Hans Wehr in *A Dictionary of Modern Written Arabic* (4th ed., 1994) defines the root verb "nafaḍa" (نفض) as "to shake," "to shake off," "to shake out," "to dust off." The reflexive verb "intafaḍa" (انتفض) means "to shake off," "to wake up," "to come to consciousness." The noun form "intifāḍa" describes an instance of shaking off, awakening, or uprising.

"Globalise the intifada" is not a commonly chanted slogan at peaceful assemblies calling for an end to Israel's well-established genocide in Gaza and Israel's illegal occupation of the West Bank. More common are the phrases "intifada, revolution" or "intifada, intifada".

Laws simply criminalising the Arabic word "intifada" is not sound and would result in racist overpolicing and misattribution directed at Arabic speakers in New South Wales. The Arabic word is used in a variety of contexts. Police would be highly likely, in applying such a law, to mistakenly criminalise speakers with precisely no public interest reason.

Where the Arabic word intifada is used to describe a political uprising, the description could apply to the Irish Easter Rising, the Warsaw Ghetto Uprising, Arab Spring protests, or any other act of political resistance against an oppressive power, as equally as it could apply to descriptions of intifadas in Palestine. Criminalisation of the word "intifada" would have the effect of prohibiting all legitimate political

communication in Arabic concerning any uprising in history or in the present day, disproportionately burdening the political communication of Arabic-speaking communities in New South Wales.

The word “intifada” can also be used in a variety of ways during political communication. Consider a lawful peaceful assembly where an Arabic speaker calling for the world to “wake up from its sleep” (انتفض من نومه - *intafaḍa min naumihi*) by confronting Israeli Government actions in Gaza. The Arabic speaker would likely face criminalization due to use of the word “intafada,” - police would have no way to distinguish that phrase from “intifada” - whereas an English speaker expressing the identical political communication by calling for the world to “awaken and take action” would not face prosecution. This contradiction exposes the fundamentally racist and discriminatory character of prohibitions targeting Arabic words rather than relying on objective assessment of substance, context, and intent. Such language-specific bans discriminate against Arabic speakers in their political expression while permitting English speakers to convey equivalent political messages without legal consequence.

There are no grounds upon which the phrase “globalise the intifada” can be categorised as so inherently hateful that it constitutes incitement of racial hatred, violence or discrimination.

Even interpreted in the historical context of uprisings in Palestine, academic consensus from language experts is clear that the word “intifada” is not, in and of itself, a call for violence or persecution against any people.[3]

Indeed historians note that the term “intifada” was selected by Palestinian students in the 1980s explicitly because it bore no connotation of violence and could signify non-violent opposition to Israeli repression. Considering this particular historical context, the phrase “globalise the intifada” could be used to call for a global de-escalation of violence against Israelis.[4]

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[3] Professor Daniel Lefkowitz (University of Virginia), specialist in language and culture in the Middle East, interviewed in Mira Fox, Daoud Kuttab (journalist), Seth Cantey (academic), Zinaida Miller (academic), and Seth Mandery (academic), cited in NaTakallam, "The Origins and Meaning of Intifada," September 2025

[4] Mary Elizabeth King, A Quiet Revolution: The First Palestinian Intifada and Nonviolent Resistance (Nation Books, 2011)

Whilst laws targeting the use of political slogans disproportionately seek to burden political communication expressing dissent against Israel's genocide in Gaza, phrases including "globalise the intifada" and "from the River to the Sea" are used in the Middle East by individuals with multiple perspectives on conflict.

In Canada, the Superior Court of Justice has held in *University of Toronto (Governing Council) v Doe et al.* [2024] ONSC 3755 that the use of phrases including "intifada", "from the River to the Sea" and "glory to our martyrs" are not inherently antisemitic, violent or discriminatory.

Justice Koehnen found, "There was considerable controversy over certain slogans used at the encampment such as "From the River to the Sea, Palestine shall be Free." A number of parties ask me to find that this and other slogans are antisemitic. The record does not establish a strong *prima facie* case to demonstrate that the slogans are antisemitic.The record before me shows that the slogan and a similar one used by Jewish Israelis, convey a variety of meanings ranging from a call for a uniquely Jewish or uniquely Palestinian State in the area between the Jordan River and the Mediterranean Sea, to a single State in which Jews and Palestinians are equal, to a two State solution. The record suggests that the precise meaning depends on the circumstances in which it is used."

Justice Koehnen's judgement draws heavily on academic evidence litigating how both Israelis and Palestinians, of multiple religious associations, reference the Israeli River and the Jordan Sea in the context of divergent political communication.[5]

With particular regard to the prohibition of slogans and symbols, Justice Koehnen found at paragraph [88] that "There was considerable debate in the record about the use of certain slogans such as "from the river to the sea," "glory to the martyrs, and the word "intifada". A number of Intervenors asked me to find those phrases to be antisemitic. I accept that these expressions are perceived as hurtful and threatening to many Jews. There appears, however, to be considerable variation, nuance and context around the meaning of these terms which, in my mind, would make it improper to automatically assume that they are antisemitic,"

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[5] Elhalaby, Emon, Paz, Roach, and Rogin From the River to the Sea: Palestine Will Be Free a Primer on History, Context and Legalities in Canada, University of Toronto Hearing Palestine, 2023.

Semantics distinguishes between denotation (literal, dictionary meaning) and connotation (associated meanings, emotional associations, cultural implications). John Lyons, in *Semantics* (Cambridge University Press, 1977) defines denotation as "that relationship which holds between a linguistic expression and what it refers to or designates in the external world" and connotation as "the emotional or affective component of meaning."

The denotation of the noun "intifada" or the verb "intafada" is "uprising," "shaking off," or "awakening". The subsequent connotations vary by community: for some Palestinians, the term when applied in reference to intifadas in Palestine could connote legitimate resistance, particularly the predominantly nonviolent First Intifada; for some Israelis and some Jewish people, the term could connote suicide bombings and violence predominantly contained within the Second Intifada. Both connotations may reflect genuine experiences, but the differing connotations are culturally and experientially conditioned, not inherent to words.

The distinction between legitimate political communication and hate speech is subject to extensive legal precedent that would impact any prohibition's Constitutionality.

In *Monis v The Queen* [2013] HCA 4 at [40]-[41] , the High Court established that offensive connotations to some audiences do not render expression inherently threatening. The High Court held that whether communication constitutes a threat depends on objective assessment of content and context, not on subjective reactions. At [138], Hayne J emphasized: "It is the content and circumstances of the communication, not the emotional response it evokes, that determines whether the communication is a threat."

In *Wertheim v Haddad* [2025] FCA 720 at [107] Justice Stewart held that "political criticism of Israel, however inflammatory or adversarial, is not by its nature criticism of Jews in general." This establishes that even inflammatory connotations attached to political expressions concerning Israel do not render those expressions inherently antisemitic.

In the Canadian example of *University of Toronto (Governing Council) v Doe et al*, Koehnen J recognized "considerable variation, nuance and context" around terms

like “intifada” and found it “improper to automatically assume that they are antisemitic” despite some perceiving them as having “hurtful and threatening” connotations. The judgment acknowledged that negative connotations for some audiences do not establish inherent hateful meaning.

In another Canadian example of *Saskatchewan (Human Rights Commission) v Whatcott* [2013] 1 SCR 467 at [123], Rothstein J distinguished between speech that may offend (protected) and speech that exposes to “detestation and vilification” (prohibitable): “Expression exposing vulnerable groups to detestation and vilification goes far beyond merely discrediting, humiliating or offending the victims.” Offensive connotations for particular communities are insufficient; objective assessment of whether expression reaches the extreme threshold of detestation and vilification was required to prove speech was hateful in Canada.

3. Constitutional Concerns and Burdens

Any prohibition on political slogans would be subject to inevitable Constitutional challenge on the grounds that such a prohibition would impermissibly burden the implied freedom of political communication contained within the Australian Constitution.

Any such challenge would be subject to precedent set in *Lange v Australian Broadcasting Corporation (1997)* 189 CLR 520 which established the framework for assessing restrictions on political communication, a framework modified in *McCloy v New South Wales (2015)* 257 CLR 178 and *Brown v Tasmania (2017)* 261 CLR 328. The test, used by Justice Mitchellmore in *Lees v New South Wales, comprises* three stages and is known as the Lange-McCloy-Brown Test.

The first test is whether a law does in fact burden political communication; in the case of a burden of political slogans used overwhelmingly in pro-Palestine protests, the burden is self-evident. Pro-Palestine slogans are political communications concerning Israeli government policy, Palestinian self-determination, international law compliance, Australian foreign policy, and military aid. They meet Lange’s criteria both as communications concerning government actions - a call to “globalise the intifada” may be a call synonymous with calls for sanctions on Israel from the

Australian government, for example - and communications concerning matters that could facilitate the making of a free and informed choice as an elector.

A ban would directly criminalize core political expressions, chill broader advocacy, and discriminate against one side of a controversial political debate.

The second test is whether the law's purpose is legitimate. Assuming the Inquiry's Terms of Reference for hypothetical laws, which identify the purpose as promoting "community cohesion and safety" by preventing use of "inherently hateful" slogans, the purpose of a prohibition on political slogans would be constitutionally problematic.

According to Premier Chris Minns, the laws are explicitly formulated to target legitimate political expression at peaceful assemblies on one side of a political debate - namely, pro-Palestine expressions. The premise of these laws would conflate legitimate criticism of Israel Government policy with "racial hatred." Given the broad nature of slogans like "globalise the intifada" and their political connotations, the purpose of prohibiting particular political speech would not be Constitutionally valid. These laws, by the Premier's admission, seek to eliminate discomfort from political debate, which *Clubb v Edwards* (2019) 267 CLR 171 at [52] held is constitutionally impermissible: "political speech is inherently apt to cause discomfort, and causing discomfort may be necessary to the efficacy of political speech."

Notably, no evidence is available to me suggesting that there have ever been any successful criminal prosecutions of hate speech, racial hatred, or racial discrimination - or of any other crime with race as an aggravating factor - which have ever relied upon the use of phrases such as "from the River to the Sea" or "globalise the Intifada" as evidence to demonstrate inherent racial bias on the part of an offender.

Indeed recent reports reveal police have mistakenly arrested a peaceful protestor for wearing the words "globalise the Intifada" who was released without charge due to lack of grounds for a charge.

It is clear that the phrases “globalise the intifada” and “from the River to the Sea” cannot be captured by our existing hate speech laws due to their nature as forms of political expression. Any phrase that was “inherently hateful” and would cause a reasonable person to fear harassment, intimidation or violence would already be captured by our existing laws - these political slogans are plainly not yet captured by our laws, given their nature as forms of political expression. If the NSW Government is genuinely of the view that these slogans are inherently hateful, they would be able to prosecute that case under existing laws.

Subsequently, NSW Government moves to expand hate speech laws for the purpose of capturing disagreeable political expression would not be Constitutionally valid and could not fit the criteria of a reasonable purpose.

The third test is proportionality; assuming the laws burden political communication and the Court finds them to have a legitimate purpose, the Government would still need to argue the laws are proportional. The commonly accepted legal test for proportionality assesses whether laws are suitable, necessary and adequately balanced.

Given the varied and wide-ranging use of the noun “intifada” and verb “intafada”, as well as the varied political meanings that can be ascribed to phrases such as “globalise the intifada” and “from the River to the Sea”, severe questions would arise about the laws’ suitability given their ambiguity in terms of their practical application.

Ambiguity about the interpretation of law and constraints on the practical application of the law were both features that were found to contribute impermissible burdens on the implied freedom of political communication in Justice Mitchellmore’s judgement in *Lees v State of New South Wales* (2025), and would both be features of any law criminalising particular political slogans such as “globalise the intifada”.

In Justice Nettle’s judgement in *Brown v Tasmania* (2017), echoed in Justice Mitchellmore’s Lees judgement, the Justice found that “where the means adopted is a power which turns upon the exercise of a discretion which is, in its terms, broad ranging, it is the more likely that it will disproportionately burden the implied freedom even though it might be said, or hoped, that the 'actual application may be limited by the sensible exercise' of the discretion.”

Multiple laws have been stuck down due to lack of proportionality; in *Brown v Tasmania*, the plurality of the High Court held the law invalid because of the "overreach of means over ends" and in *Unions NSW v New South Wales*, Supreme Court Justice Keane held that laws failed to "reflect a calibrated balancing of legitimate ends... the proscriptions in s 96D are very broad; they are not calibrated to give effect to the rationale identified by the defendant by criteria adapted to target the vices said to attend the disfavoured sources of political communication."

Even cases where laws burdening political communication have been upheld, they have been upheld on specific grounds which a prohibition would not meet.

Clubb v Edwards (2019) 267 CLR 171 upheld 150-meter access zones around abortion clinics but contains analysis fatal to the proposed slogan ban.

The plurality judgment (Kiefel CJ, Bell J, Keane J) emphasized viewpoint neutrality as critical to constitutional validity. At paragraphs 54-55, the Court examined whether the law discriminated against the anti-abortion viewpoint, holding it did not because "the prohibition is not directed exclusively at anti-abortion communication" but applied to anyone communicating "in relation to abortions."

A ban on pro-Palestine political slogans lacks viewpoint neutrality. It targets only pro-Palestine expressions while leaving pro-Israel slogans unrestricted. This violates the principle stated at paragraph [54] "... a law that burdens one side of a political debate, and thereby necessarily prefers the other, tends to distort the flow of political communication."

The abortion clinic restrictions in *Clubb vs Edwards* were contained within a tightly-defined 150m area; a prohibition on political slogans would apply statewide. Abortion clinic restrictions were upheld on the grounds that protest against people accessing reproductive care occurred against a captive audience; a slogan prohibition would apply across the general public including at peaceful assemblies in public places. Abortion clinic restrictions infringed upon political communication only at specific times, places, and in particular manners; prohibiting political slogans is content based and viewpoint discriminatory. Abortion clinic restrictions did not discriminate on subject matter surrounding political communication around

reproductive healthcare; prohibiting political slogans deliberately discriminates against one side of the debate concerning Israel's genocide in Gaza.

Notably multiple Judges in *Clubb* dissented on the grounds that even the narrow restrictions on political communication contained within 150m of an abortion clinic were disproportionately burdensome.

The *Law Enforcement (Powers and Responsibilities) Act 2002* powers struck down by Justice Mitchellmore were found to be too broad to be proportionate, and those powers were applicable in a narrower area than a statewide ban on political slogans would be. It therefore follows that a statewide ban on political slogans would be more burdensome than police powers at places of worship and subject to similar Constitutional invalidity.

Justice Mitchellmore documented that pro-Palestine protests occurred regularly from October 2023 through February 2025, routinely involving between 1,000 and 10,000 participants. These protests were found to unequivocally constitute "communications concerning government and political matters" within the meaning of *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520. The protests were found to address Israeli government policy, Australian foreign policy, international law compliance, and Palestinian self-determination, quintessentially political matters affecting electoral choices.

The Court accepted affidavit evidence from organisers stating that, "The nature of protest is that you are vocally objecting to an event that is taking place and often expressing vigorous opposition to people on the other side of a political dispute. There are often political slogans shouted at people going into a venue or event at which you are protesting. Sometimes people can scream vigorously to express objection to the political forces that might be gathering there. It's the nature of the protest."

Furthermore, the law would target legitimate political expression particularly at apparently genuine political demonstrations and assemblies, by the Premier's own admission.[6]

[6] Guardian, "NSW to effectively ban protests for up to three months as premier links Gaza rallies to Bondi terror attack", 19 Dec 25

Criticism of the political ideology of Zionism or of Zionists is legitimate political expression and not racial hatred. Criticism of the State of Israel and advocacy for a one-state solution, two-state solution, three-state solution or other nonviolent resolution to Israel's occupation of Palestine is, similarly, political and not hateful. Whilst some assume advocacy against a State of Israel as a "Jewish State" with a hierarchy of religion to be offensive, the very fact that the content of that advocacy is subject to political controversy is enough to deem it "political"[7] and certainly not "hateful".

This premise has been explicitly confirmed by precedent set in *Wertheim v Haddad* [2025] FCA 720. Justice Stewart's judgment in Federal Court proceedings under section 18C of the *Racial Discrimination Act 1975* (Cth) provides authoritative analysis of the distinction between criticism of Israel/Zionism and antisemitism.

At paragraph 107, Justice Stewart held:

> "I do not consider that the ordinary, reasonable listener would understand Mr Haddad in these passages, either in isolation or in the context of the sermon as a whole, to be saying anything about Jews generally or about all Jews. He is quite specific in the sermon. He is critical of Israel, the IDF and Zionists... The ordinary, reasonable listener would understand that not all Jews are Zionists or support the actions of Israel in Gaza and that disparagement of Zionism constitutes disparagement of a philosophy or ideology and not a race or ethnic group. Needless to say, political criticism of Israel, however inflammatory or adversarial, is not by its nature criticism of Jews in general or based on Jewish racial or ethnic identity: see *South African Human Rights Commission on behalf of South African Jewish Board of Deputies v Masuku* [2022] ZACC 5; 2022 (4) SA 1 (CC) at [4]-[6] and [161]-[166] per Khampepe J for the Court. Indeed, the applicants did not submit that it is. The conclusion that it is not antisemitic to criticise Israel is the corollary of the conclusion that to blame Jews for the actions of Israel is antisemitic; the one flows from the other."

[7] *Clubb v Edwards; Preston v Avery* [2019] HCA 1; (2017) 261 CLR 328

Notably, Justice Stewart found that Mr Haddad's hate preaching was antisemitic and subject to criminalisation under section 18C of the *Racial Discrimination Act*; of course, antisemites can and do exploit anti-Zionism in their communications. However, in accordance with the Federal Court judgement, it is the antisemitism subject to criminalisation and not the anti-Zionism; the former is criminal hate speech, the latter is protected political communication. Expanding hate speech laws that currently do not capture anti-Zionist slogans to capture Constitutionally protected anti-Zionist political communication would not be sound.

Justice Koehnen's judgment in the Superior Court of Canada is even more explicit in its dealings with political slogans and it documents examples of conflating criticism of Israel with antisemitism. At paragraph 88, Justice Koehnen held:

> "There was considerable debate in the record about the use of certain slogans such as "from the river to the sea," "glory to the martyrs, and the word "intifada". A number of Intervenors asked me to find those phrases to be antisemitic. I accept that these expressions are perceived as hurtful and threatening to many Jews. There appears, however, to be considerable variation, nuance and context around the meaning of these terms which, in my mind, would make it improper to automatically assume that they are antisemitic,"

At paragraph 24, Justice Koehnen noted the "moral panic" surrounding Israel/Palestine discourse that "can lead people to have instant, knee-jerk reactions to events without fully investigating the facts" and to "attribute the malicious intentions of the few onto the peaceful majority."

For political slogans such as "globalise the intifada" to be criminalised on the basis they are "inherently hateful" would be a perfect example of malicious intentions being imposed upon a peaceful and legitimate sector of the population wanting to freely communicate their views about Israel's genocide in Gaza.

Summarily, a prohibition on political slogans would fail all stages of the tests set out for the Constitutionality of laws infringement upon the freedom of political communication. A prohibition would repeat the exact mistakes of previous failed anti-protest laws.

A proposed prohibition on political slogans would be so clearly unconstitutional that to progress laws enacting such a prohibition would amount to a political stunt, causing avoidable confusion and hurt for the people of New South Wales including the Jewish community and Muslim community.

If the purpose of the inquiry is to prevent racial hatred and enhance community safety and cohesion, the inquiry has no choice but to recommend against introducing unconstitutional laws which would be counterproductive and harmful.

Another case in a comparable democracy would be *Baldassi and Others v France* (European Court of Human Rights, 11 June 2020, Application no. 25014/15), which addressed the criminal conviction of BDS (Boycott, Divestment and Sanctions) activists in France for calling for a boycott of Israeli products. The Court found France violated Article 10 (freedom of expression) of the European Convention on Human Rights by criminalizing peaceful political boycott advocacy.

At paragraph 63, the Court held: “A boycott is first and foremost a means of expressing opinions by way of protest. A call for a boycott, which imparts those opinions while appealing for specific actions arising from them, thus falls in principle within the protection of Article 10 of the Convention.”

The European Court held that the French courts “artificially and arbitrarily depoliticised” the activist’s expression “in order to remove it from the protected category of political speech”. The Court distinguished the French case from *Perinçek v Switzerland,* which required examination of whether expression constituted incitement to hatred “having regard in particular to the context in which the remarks had been made.”

The Court found that French law prohibiting “any call for a boycott of products on account of their geographical origin, regardless of the substance, grounds or circumstances” violated Article 10 of the European Convention of Human Rights, holding that “[s]uch a generalised prohibition does not allow for the necessary analysis of the circumstances of a given case and does not leave space for the identification and balancing of the different rights and interests in play.”

The European Court's test recommended assessing the line between hate speech and political communication subject to consideration of substance, grounds and circumstances surrounding the use of particular forms of political communication - a test that could also be used in Australia.

Recommendation 4: The inquiry should distinguish between political slogans which are protected by the Constitutionally implied freedom of political communication - including common anti-Zionist slogans such as "globalise the intifada" and "from the River to the Sea" - and hate speech.

Recommendation 5: The inquiry should recommend against a prohibition on political slogans on the grounds it would be unconstitutional and counterproductive to the aims of decreasing racial hatred and improving community safety and cohesion.

4. UK examples criminalising peaceful protest

The United Kingdom's system of restricting legitimate political expression by proscribing organisations engaged in civil disobedience as terrorist organisations, thereby criminalising any association with them, is by no means best practice and should be discarded as evidence that can point toward effective legal remedies in Australia.

New UK laws prescribing Palestine Action as terrorist, for attempting to disrupt the flow of arms to Israel, have been criticised by United Nations experts including UN High Commissioner for Human Rights Volker Türk and UN Special Rapporteur Prof. Ben Saul.

The laws are subject to current Court challenge in the United Kingdom on multiple grounds already upheld as valid by the UK courts.[8]

The UK terrorist proscription regime imposes disproportionate burdens on freedom of political communication and association by employing an overly broad statutory

[8] *Ammori v SSHD* [2025]

definition of terrorism that extends far beyond international standards, criminalizing property damage where international conventions require violence against persons, death, serious injury, or hostage-taking.

This “strikingly” broad definition (as courts in *R v F* and *R v Gul* have acknowledged) enables proscription of direct action protest groups whose objectives may be directed toward upholding international law rather than destroying democratic institutions, yet whose members and supporters face the most serious form of criminal interference—terrorism convictions carrying severe penalties and lifelong reputational consequences, rather than ordinary public order offences. Proscription operates as prior restraint, a measure the European Court of Human Rights has recognized presents “great dangers” requiring “most scrupulous examination,” yet the UK government's proscription decisions have proceeded without proper proportionality analysis, full impact assessments, or adequate consideration of Articles 10 and 11 ECHR impacts.

The regime criminalizes not merely violent conduct but membership, support, and even wearing clothing or displaying articles associated with proscribed organizations, thereby chilling legitimate political discourse about international conflicts, human rights violations, and government policy. This approach is fundamentally out of step with comparable liberal democracies and responsible states globally, where terrorism designations are typically reserved for extremist actors engaged in grave large-scale atrocities or sustained campaigns of murder, not protest movements whose direct action tactics, however unlawful or property-damaging, serve to communicate political views about matters of profound public concern including alleged war crimes, crimes against humanity, and genocide.

A similar terrorist prescription regime in New South Wales would have catastrophic implications for democracy. Any group using civil disobedience to oppose fossil fuels, weapons, native forest logging, evictions from rentals, worker exploitation and so on could face prescription as “terrorist” and subsequent criminalisation. Such a regime would be profoundly authoritarian and fascist if used to its fullest extent.

The fact that the Committee's terms of reference automatically designate the United Kingdom's laws as "best practice", despite their current challenge in the UK courts, is alarming, counterproductive and extraordinary.

Recommendation 6: Remove the words "including measures and approaches taken in the United Kingdom" from the Inquiry's terms of reference

Recommendation 7: Do not consider evidence of the United Kingdom's system in the Inquiry report until a Court judgement concerning a challenge to the current UK laws is resolved

5. Evidence-based opportunities to curb racism, antisemitism and racial discrimination

The NSW Civil Council for Civil Liberties (NSWCCL) submission to the Independent Review on Criminal Hate Speech (6 August 2025) establishes that "the criminal law, by its nature and application, simply cannot protect against the incitement of hatred on the grounds of race. There is no evidence to suggest that criminalising acts of hate and racism have an impact on reducing those phenomena, nor that doing so would curb radicalisation."

Criminal law is reactive, not preventive. It responds after harm occurs rather than addressing conditions that produce hatred. A government cannot order and arrest its way into socially well-connected communities.

Evidence-Based Measures: Community Education and Engagement
The Justice and Equity Centre submission (p.5-6) recommends "non-legal measures to address the drivers of hatred in our community,".

The Jewish Council of Australia have emphasized: "The path to a safer and more inclusive society lies not in the criminalisation of speech or protest, but in cultivating mutual respect, open communication, and genuine commitment to human rights for all."

Such measures could include:

1. School-based education: Curricula teaching about antisemitism, Islamophobia, anti-Palestinian racism, and other forms of discrimination. Education about the distinction between criticism of government policies and hatred of ethnic or religious groups. Historical education on the impacts of hatred and the importance of tolerance.
2. Community dialogue initiatives: Programs bringing together Jewish, Muslim, Palestinian, and other communities for structured dialogue. Interfaith and intercultural exchange programs building understanding across differences. Grassroots anti-racism initiatives led by affected communities.
3. Public awareness campaigns: Media campaigns challenging stereotypes and promoting inclusion. Education about the harms of hatred and the benefits of diversity. Platforms for diverse voices to share experiences and perspectives.
4. Social media platform regulation: Requirements for platforms to address algorithmic amplification of divisive content. Transparent content moderation policies with independent oversight. Investment in human moderators with cultural and linguistic competency.
5. Media literacy programs: Public education in critical evaluation of news sources. Understanding of how misinformation spreads and techniques for verification. School-based programs teaching media literacy from early ages.
6. Specialized hate crime units: Police units with expertise in distinguishing genuine threats from protected political speech. Cultural competency training regarding Jewish, Muslim, Palestinian, and other communities. Training on the distinction between criticism of states/policies and hatred of ethnic/religious groups.
7. Independent oversight: Mechanisms for independent review of policing responses to protests and community tensions. Complaint processes accessible to affected communities. Regular reporting on use of hate crime laws and move-on powers.

The NSWCCL submission and Justice and Equity Centre submission both emphasize civil anti-discrimination law as preferable to criminal prohibition, and recommend subsequent reform.

The concurrent NSW Law Reform Commission review of the Anti-Discrimination Act 1977 provides opportunity to strengthen civil vilification protections. Civil remedies (education orders, apologies, compensation) are more appropriate than criminal penalties for most instances of vilification.

The Committee should recommend, for example, better funding for the Australian Human Rights Commission and NSW Anti-Discrimination Board to investigate complaints, mediate disputes, and educate the public.

The Committee should also recommend accessible complaint mechanisms for civil cases of racial discrimination including simplified processes for lodging complaints, expanded access to legal assistance for complainants, and goals to improve timely resolution of disputes.

Importantly our current laws seeking to criminalise racial discrimination include exemptions for discriminatory religious speech. This makes criminalization of hate preachers like Wissam Haddad much more difficult and has particularly impacts on the LGBTQ+ community.

The Committee should recommend removal of the religious exemption in section 93ZAA of the *Crimes Act 1900* that permits quoting or referencing religious texts when inciting hatred.

In some cases our current laws are being underutilized in their capacity to combat racial hatred. In others, flawed drafting of our racial hatred laws makes proper consideration of racism impossible.

Concerns I raised in parliament concerning new section 93ZAA's practical limitations have been confirmed by data displaying that between 1 and 2 charges have been laid under this section, and 1 charge was withdrawn under the section.

A perfect example of the flawed nature of section 93ZAA is the assault of Shamikh Badra, a Palestinian Australian, in which Shamikh's assailant told Shamikh to *"Get the fuck out of here. We don't like you in our country. We don't want you in our country,"..."We don't want you here. Fuck off…"This is Australia, you love getting free money, you fucking loser cunt,"*

According to Police Minister Yasmin Catley, *“The specific comments identified as being made neither satisfied the elements of hate speech under section 93Z of the Crimes Act 1900 nor the aggravating factor prescribed under section 21A(2)(h) of the Crimes (Sentencing Procedure) Act 1999 as they did not disclose a prejudice against the victims due to their ethnicity or race.”*

As reported in the Guardian, *“University of Sydney law expert Prof Simon Rice said the relevant provisions of NSW’s Crimes Act – section 93Z covering inciting violence on the grounds of race, and section 93ZAA, which covers inciting hatred – had to be proven beyond a reasonable doubt. Rice said 93ZAA didn’t necessarily cover conduct that was itself hateful. Critics of the offence, which came into effect just before the train assault, have accused the Minns government of ignoring its own 2024 review into hate speech. That report argued such laws would “introduce imprecision and subjectivity into the criminal law”. In the absence of a stated intention to incite hatred, “it has to be inferred from what is said and done”, Rice said this week.”*

Recommendation 8: The Inquiry should primarily focus on civil measures to combat racism, including by recommending school-based education, community dialogue initiatives, public awareness campaigns, social media platform regulation, media literacy programs and specialized hate crime units

Recommendation 9: Increase funding for the NSW Anti-Discrimination Board

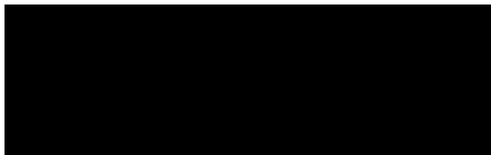
Recommendation 10: Improve accessible complaint mechanisms for civil cases of racial discrimination including simplified processes for lodging complaints, expanded access to legal assistance for complainants, and goals to improve timely resolution of disputes

Recommendation 11: Remove the religious exemption in section 93ZAA of the *Crimes Act 1900* that permits quoting or referencing religious texts when inciting hatred

Recommendation 12: Consider the efficacy of section 93ZAA of the *Crimes Act 1900* as a tool for combating racism

Thank you for the opportunity to submit to the Inquiry.

Kind regards,



Sue Higginson
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